No. 80-1088

In the Supreme Court of the United States

OCTOBER TERM, 1980

GERRY A. BLODGETT AND KATHERINE A. BLODGETT,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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TABLE OF AUTHORITIES

Page

Cases:

Anderson v. *United States*, 75-2 U.S.T.C. para. 9578 2

Augen v. *Commissioner*, 33 T.C.M. 1022 2

Lezdey v. *Commissioner*, 23 T.C.M. 485 4

Lunsford v. *Commissioner*, 32 T.C.M. 64 3-4

Martin v. *Commissioner*, 24 T.C.M. 982, aff'd, 363 F. 2d 35 3

Melnik v. *United States*, 73-2 U.S.T.C. para. 9520, aff'd, 521 F. 2d 1065, cert. denied, 425 U.S. 911 2

Montgomery v. *Commissioner*, 23 T.C.M. 599 ... 4

Rombach v. *United States*, 440 F. 2d 1356 3

Sperry v. *Florida*, 373 U.S. 379 ..... 1, 2, 3

Taubman v. *Commissioner*, 60 T.C. 814 2

Weiszman v. *Commissioner*, 52 T.C. 1106, aff'd, 443 F. 2d 29 3

Weiszman v. *Commissioner*, 483 F. 2d 817 3

Regulations:

26 C.F.R. 1.162-5(b)(1) and (3) 2

37 C.F.R. 1.341(b) 1

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The question presented in this federal income tax case is whether petitioner[1] may deduct the costs of law school courses taken by him in 1975 as ordinary and necessary expenses in his trade or business of being employed as a registered patent agent.[2]

The relevant facts may be summarized as follows: During 1975, petitioner was employed full time as a registered patent agent (Pet. 7). During that year, petitioner also took

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[1]"Petitioner" refers to Gerry A. Blodgett. Katherine A. Blodgett is a party solely because she filed a joint income tax return for 1975 with her husband (Pet. App. 2).

[2]A registered patent agent is an individual allowed to prepare and prosecute patent applications before the United States Patent Office. Although this work may constitute a species of the practice of law (*Sperry* v. *Florida*, 373 U.S. 379, 383 (1963)), patent agents are not required to be attorneys or members of the bar. See 37 C.F.R. 1.341(b).

numerous law school courses[3] as a part of a course of study which would lead to qualifying as an attorney (Pet. App. 2). On audit, the Internal Revenue Service disallowed petitioner's claimed deduction of his law school tuition expenses. In this suit for refund brought by petitioner to recover the ensuing deficiency, the Court of Claims upheld the Commissioner (Pet. App. 1-5).

The decision below correctly held that petitioner was not entitled to a deduction for the law school tuition expenses. The Treasury Regulations on Income Tax, Section 1.162-5(b)(1) and (3) (26 C.F.R.), provide that the expenses of a course of study which qualifies a taxpayer for a new trade or business shall be nondeductible. Petitioner does not challenge this Regulation, which has been upheld to deny the deductibility of law school expenses to a variety of taxpayers. See, *e.g.*, *Melnik* v. *United States*, 73-2 U.S.T.C. para. 9520 (C.D. Cal. 1973), aff'd per curiam, 521 F. 2d 1065 (9th Cir. 1975), cert. denied, 425 U.S. 911 (1976) (internal revenue agent); *Anderson* v. *United States*, 75-2 U.S.T.C. para. 9578 (N.D. Cal. 1975) (orthopedic surgeon); *Taubman* v. *Commissioner*, 60 T.C. 814 (1973) (accountant); *Augen* v. *Commissioner*, 33 T.C.M. 1022 (1974) (insurance claims adjuster). Instead, petitioner argues (Pet. 8-9) that under this Court's decision in *Sperry* v. *Florida*, 373 U.S. 379 (1963), he is already practicing law and that his law school courses did not prepare him for a new trade or business.

To be sure, this Court in *Sperry* v. *Florida*, *supra*, 373 U.S. at 383, indicated that practice as a registered patent agent was the practice of law for state licensing purposes.

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[3]The courses included Evidence, Product Liability, Trusts, Business Associations II, Practice and Procedure, Administrative Law, Family Law, Secured Transactions, Landlord and Tenant, Clinical Studies, Conflicts of Law, Professional Responsibility and Federal Taxation (Pet. App. 2-3, n.2).

But it is also clear that the trade or business of an attorney is far broader than, and different from, the trade or business of a registered patent agent. The Court in *Sperry* expressly recognized this distinction when it noted (373 U.S. at 384-385) that regulations issued by the Commissioner of Patents permitted non-attorney agents to practice before the Patent Office and held that state attorney licensing laws must yield to those regulations in matters concerning practice before that office.

Thus, the conclusion that petitioner's law school studies prepared him for a new trade or business is not at variance with *Sperry*. Hence, the courts which have considered the matter have repeatedly ruled that patent agents, patent trainees, and patent examiners[4] may not deduct the costs of law school attendance. *Weiszmann* v. *Commissioner*, 483 F. 2d 817, 819-820 (10th Cir. 1973); *Martin* v. *Commissioner*, 24 T.C.M. 982 (1965), aff'd per curiam, 363 F. 2d 35 (4th Cir. 1966); *Rombach* v. *United States*, 440 F. 2d 1356, 1359-1360 (Ct. Cl. 1971); *Weiszmann* v. *Commissioner*, 52 T.C. 1106, 1108-1111 (1969), aff'd per curiam, 443 F. 2d 29

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[4]Patent agents and patent trainees prepare and prosecute patent applications for various applicants. Patent examiners evaluate these applications for the Patent Office.

(9th Cir. 1971); *Lunsford* v. *Commissioner*, 32 T.C.M. 64 (1973); *Montgomery* v. *Commissioner*, 64 T.C.M. 599 (1964); *Lezdey* v. *Commissioner*, 23 T.C.M. 485 (1964).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

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